

STATE OF INDIANA  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., the "Act") and IDEM's authority under IC 13-15,

ACME BUILDERS INC.

is authorized to discharge pollutants into certain waters located at Anywhere, Marion County in accordance with the requirements set forth in this permit.

Effective Date: September 25, 2001

Expiration Date: September 25, 2003

Signed this 10th day of September, 2001, for the Indiana Department of Environmental Management.

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Matthew C. Rueff  
Assistant Commissioner  
Office of Water Quality

September 10, 2001

### PROJECT DESCRIPTION

The permittee proposes to place earthen fill materials within 0.3 acres of forested wetlands in order to create a parking lot for commercial development. The permittee will avoid 2.0 acres of emergent wetlands and will create a 25 foot buffer around these areas to protect these areas from parking lot run-off. The permittee will replace all impacted wetlands at a 4:1 ratio by restoring 1.2 acres of forested wetlands on a mitigation site located adjacent to the 2.0 acres of emergent wetlands.

### **PART I.**                    DISCHARGE AND MONITORING CONDITIONS

During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee is authorized to discharge pollutants into the waters described in the application submitted on July 1, 2001, in accordance with the requirements specified hereinafter.

#### **A.     Discharge Conditions/Limitations**

1.     Except as modified by the conditions of this permit, the permittee shall conduct all work in accordance with: (a) the application dated July 1, 2001, (b) plans submitted with the application on July 1, 2001, and (c) correspondence from AAA Environmental Consulting dated July 21, 2001.
2.     The permittee may discharge pollutants to fill 0.3 acres of wetland as identified in the documents listed in item 2 above. The pollutants that may be discharged include rock, sand and earth ("authorized fill material"); pollutants may not be discharged if they constitute (a) any material that is hazardous waste or special waste, as defined in IC 13-11-2-98 and IC 13-11-2-215, respectively, or (b) trash, car bodies or asphalt.
3.     To prevent unauthorized discharges, the permittee shall install and maintain erosion control measures prior to any soil disturbance to prevent soil from leaving the project site. Appropriate erosion control measures include straw bale barriers, silt fencing, erosion control blankets, seeding, and earthen berms. These measures must be maintained until all soils disturbed by construction activities have been permanently stabilized.

#### **B.     Mitigation Requirements**

1.     Except as modified by the conditions of this permit, the permittee shall implement the mitigation plan as described in correspondence received from AAA Environmental Consulting dated July

21, 2001 (referred to collectively hereinafter as the "mitigation plan"). The wetland(s) being created or restored pursuant to the mitigation plan shall be referred to hereinafter as the "mitigation wetland".

2. The permittee shall complete all activities necessary to create the mitigation wetland within one year of the effective date of this permit, unless IDEM grants a written extension upon request. These activities include excavation, grading, installation of hydrologic controls and planting.
3. The permittee shall protect all areas upon which a mitigation wetland is to be created with a conservation easement or deed restriction. These areas shall be protected as wetlands for a minimum period of fifty (50) years and the discharge of pollutants, including fill material, in them or their excavation shall be prohibited. A copy of the signed and recorded modification to the deed shall be filed with this office within sixty (60) days of the permittee's release from monitoring requirements pursuant to Part I.C. of this permit.
4. The permittee shall ensure that the mitigation wetland meets all of the following success criteria for two consecutive years within five (5) years of the creation of the wetland:
  - a. Greater than 50% of the dominant vegetation species must be classified as hydrophytic.
  - b. The hydrology at the mitigation site must meet the wetland hydrology criteria contained in the United States Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1 (January, 1987).
  - c. 70% vegetation cover of the plant species
  - d. The site is free from the plant *Phalaris arundinacea*.
  - e. The applicant shall control exotic plant species by selective use herbicide or mechanical removal.
  - f. No more than ten (10) percent of the surface area of the mitigation site may be open water for all or part of the year.
  - g. The mitigation wetland consists of 1.2 acres of forested wetland.
  - h. Any additional success criteria set forth in the mitigation plan.
5. After construction of the mitigation wetland, the permittee shall clearly identify on-site all mitigation wetlands. The permittee shall install survey markers to identify the boundaries of the wetlands. If the mitigation wetlands being created are adjacent to or near existing wetlands, then the survey markers must distinguish the created wetland from the existing wetland.

### **C. Monitoring and Reporting**

1. The permittee shall monitor the compensatory mitigation wetland annually to determine whether it is achieving the success criteria contained in Part I.B.4 of this permit. The permittee shall take

such steps as are necessary to ensure the compensatory mitigation wetland will achieve success within the required period.

2. The permittee shall submit annual monitoring reports of the compensatory mitigation wetland to this office by December 31 of each year until released from monitoring by this office. These reports shall contain information concerning what steps the permittee has taken to create the compensatory mitigation wetland and whether the wetland is achieving each of the success criteria outlined in Part I.B.4. The reports shall include the following
  - a. The IDEM identification number.
  - b. As-built plans (in the first year's report).
  - c. Discussion of hydrology at the mitigation site.
  - d. Discussion of plant community development at the mitigation site.
  - e. Discussion of methods or means used to determine compliance with the success criteria.
  - f. Photographs representative of the mitigation site and sampling points.
  - g. Identification of any problems with meeting the success criteria.
  - h. Recommendations for correcting any problems identified.
  - i. Wetland delineation for the mitigation wetland in the final report.
3. The permittee shall monitor the mitigation wetland for a minimum period of three (3) years. In order to be released from monitoring, the permittee must demonstrate to IDEM, through its monitoring reports that the success criteria specified in Part I.B.4 have been met for two consecutive years within a five year period. Once the permittee believes it has met this requirement, it may submit its proposed final monitoring report to IDEM and suspend monitoring unless notified otherwise by IDEM. If IDEM determines that the success criteria have not been met, then the permittee shall resume monitoring. If IDEM confirms that the success criteria have been met, then the permittee may permanently discontinue monitoring after it receives written notification of this determination from IDEM.
4. The permittee shall include a delineation of all mitigation wetlands in the final monitoring report. The delineation must be conducted on-site using the hydrology and vegetation parameters from the United States Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1 (January, 1987). The delineation report must include data sheets and a survey, map or drawing with area measurements (in acres) of all mitigation wetland boundaries.
5. All records and information resulting from the monitoring activities required by this permit shall be retained for a minimum of three (3) years. The three years shall be extended:
  - a. automatically during the course of any unresolved litigation or enforcement action regarding compliance with the permit; or
  - b. as requested by the Indiana Department of Environmental Management.

**PART II.** **STANDARD CONDITIONS**

**1. GENERAL**

**A. Duty to Comply**

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of IC 13 and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

**B. Penalties for Violations of Permit Conditions**

Pursuant to IC 13-30-4, a person who violates any provision of this permit or of water pollution control laws or a rule or standard adopted by the Water Pollution Control Board is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of any violation. Pursuant to IC 13-30-6, a person who intentionally, knowingly, or recklessly violates any provision of this permit or of water pollution control laws or a rule or standard adopted by the Water Pollution Control Board commits a class D felony punishable by the term of imprisonment established under IC 35-50-2-7(a), and/or by a fine of not less than two thousand five hundred dollars (\$2,500) and not more than twenty-five thousand dollars (\$25,000) per day of violation. A person convicted for a violation committed after a first conviction under this section is subject to a fine of not more than fifty-thousand dollars (\$50,000) per day of violation.

**C. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit

**D. Permit Modification, Revocation and Reissuance, and Termination**

1. This permit may be modified, revoked and reissued, or terminated for cause, including, but not limited to, the following:
  - a. Violation of any term or condition of this permit; or
  - b. Failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts by the permittee in the application or during the permit issuance process;  
or

- c. A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by this permit.
- 2. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or any information specified in Part II.A.5 of this permit does not stay or suspend any permit term or condition.

**E. Duty to Provide Information to the Commissioner**

- 1. The permittee shall submit any information that the permittee knows or has reason to believe would constitute cause for modification or revocation and reissuance of the permit at the earliest time such information becomes available, such as plans for physical alterations or additions to the permitted project that:
  - a. could significantly change the nature of, or increase the quantity of, pollutants discharged; or
  - b. the commissioner may request to evaluate whether such cause exists.
- 2. The permittee shall furnish to the Commissioner any information which the Commissioner may request to determine compliance or whether cause for modification exists with this permit. The permittee shall furnish any reports or data necessary to carry out this provision and the provisions of 327 IAC 5 at such time and in such a manner as the Commissioner may reasonably prescribe.

**F. State Laws**

Nothing in this permit shall be construed to preclude the initiation of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Clean Water Act.

**G. Other Permits**

- 1. This permit does not relieve the permittee from the responsibility of obtaining any other permits or authorizations that may be required for this project or related activities from IDEM or any other agency or person.
- 2. If the project will disturb 5 acres or more of soil, then the permittee must comply with the stormwater requirements of 327 IAC 15-5. The IDEM stormwater permits section may be reached at 317/232-8648.

3. The permittee should also contact the Indiana Department of Natural Resources at 317/ 232-4161 concerning the possible requirement for a natural freshwater lake or floodway permit.

#### **H. Incorporation by Reference**

The following provisions are hereby incorporated by reference:

327 IAC 5-2-6

327 IAC 5-2-8

327 IAC 5-2-9

#### **I. Property Rights and Authorizations**

1. The issuance of this permit does not convey any property rights of any sort or any exclusive privileges.
2. This permit does not:
  - a. authorize impacts or activities except as specified in this permit;
  - b. authorize any injury to persons or private property or invasion of other private rights, or any infringement of federal, state or local laws or regulations;
  - c. convey any property rights of any sort, or any exclusive privileges;
  - d. preempt any duty to obtain federal, state or local permits or authorizations required by law for the execution of the project or related activities; or
  - e. authorize changes in the plan design detailed in Part I.A.2. of this permit.

#### **J. Inspection and Entry**

The permittee shall allow the Commissioner, or an authorized representative (including an authorized contractor acting as a representative of the commissioner), upon the presentation of credentials:

- a. to enter upon the applicant's property;
- b. to have access to and copy at reasonable times any records that must be kept under the conditions of this permit;
- c. to inspect, at reasonable times, any monitoring or operational equipment or method or any practices required or regulated under this permit; and
- d. to sample or monitor any discharge of pollutants, inspect any wetland mitigation site or determine compliance with the conditions of this permit or state law.

2. **REPORTING REQUIREMENTS**

**A. Advance Notice of Planned Project Changes**

The permittee shall give advance notice to the commissioner of any planned changes in the permitted project or any other circumstances that the permittee has reason to believe may result in noncompliance with permit requirements. Notice must be given as soon as the permittee becomes aware of the changes or circumstances.

**B. Twenty-Four Hour Reporting Requirement**

1. The permittee shall orally report to the Commissioner information on any noncompliance (a) with a discharge condition set forth in Part I.A. of this permit, or (b) that may pose a significant danger to human health or the environment. Reports under this item shall be made within 24 hours from the time permittee becomes aware of such noncompliance.
2. The permittee can make the oral reports by calling (317) 232-8795 during regular business hours or by calling (317) 233-7745 ((888) 233-7745 toll free in Indiana) during non-business hours. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce and eliminate the noncompliance and prevent its recurrence. The Commissioner may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

**C. Other Noncompliance**

The permittee shall report any instance of noncompliance with the Mitigation Requirements in Part I.B. or the Monitoring and Reporting Requirements in Part I.C. within thirty (30) days of the time the permittee becomes aware of such noncompliance.

**D. Other Information**

Where the permittee becomes aware of a failure to submit any relevant facts or submitted incorrect information in a permit application or in any report, the permittee shall promptly submit such facts or corrected information to the Commissioner.



**E. Signatory Requirements**

All reports required by the permit and other information requested by the Commissioner shall be signed and certified by a person described below or by a duly authorized representative of that person:

1. For a corporation: by a responsible corporate officer defined as a president, secretary, treasurer, any vice-president of the corporation in charge of a principal business function, or any other person who performs similar policymaking or decision making functions for the corporation or the manager of one or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (25,000,000) (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
3. For a federal, state or local governmental body or any agency or political subdivision thereof: by either a principal executive officer or ranking elected official.
4. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described above.
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. ( A duly authorized representative may thus be either a named individual or an individual occupying a named position.); and
  - c. The authorization is submitted to the Commissioner.

**Certification.** Any person signing a document identified under Part II.E. shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate,

and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**F. Penalties for Falsification of Reports**

Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 180 days per violation, or by both.